IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2002

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.NO.213 OF 1998

The Commissioner of Income Tax
Tamil Nadu-IV Madras ..Applicant

-Vs-

Shri P.N.Bajaj
850,Mount Road, Madras ..Respondent

Tax case arises out of the order of the Income Tax Appellate Tribunal, Madras Bench-A dated 13.9.1994 in I.T.A.No. 337/Mds/1989 at the instance of the Revenue.

!For applicant : Mrs. Pushya Sitharaman
Senior Standing counsel(IncomeTax)

^For respondent : Mr.G.Ramachandran
Senior Counsel
for M/s Anita Sumanth

:JUDGMENT

(Judgment of the Court was made by N.V.BALASUBRAMANIAN,J.)

The Income Tax Appellate Tribunal has stated a case under Section 25 6 (2) of the Income Tax Act, 1961 and referred the following question of law in relation to the assessment of the assessee for the assessment year 1985-86 at the instance of the Revenue.

"1. Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the assessee's share of income of the private family trust cannot be taken into account for rate purposes under Section 86(v) of the Income-Tax Act?"

2.The assessee is an individual and the assessment year involved is 1985-86 for which the relevant previous year ended on 31.3.1985. The assessee, inter-alia, received a sum of Rs.30,013/- being his share of income

of a trust called 'Bajaj Family Trust'. The assessee is one of the beneficiaries of the said Trust. It is admitted by the learned Senior Counsel for the Revenue that the entire income of the trust including a sum of Rs. 30,013/- was assessed in the hands of the representative assessee, namely, the trustee. The assessing officer for the assessment of the assessee-individual has included the amount received by the assessee, as one of the beneficiaries, from the trusts for rate purposes under Section 86 of the Income-tax Act. On appeal preferred by the assessee before the Commissioner(Appeals), the Commissioner (Appeals)upheld the action of the Income Tax Officer in including a sum of Rs.30,013/- for rate purposes. The assessee preferred further appeal before the Income Tax Appellate Tribunal, Madras Bench. The Income-Tax Appellate Tribunal held that the assessee's share of income of the trust cannot be included for rate purposes on the ground that the assessee has not received the share income as a member of association of persons and hence, the income received by the assessee cannot be taken into account for rate purposes

and allowed the appeal preferred by the assessee. The Revenue is challenging the order of the Tribunal, sought for a reference and the Tribunal has stated a case and referred the question of law stated earlier.

3.Heard Mrs. Pushya Sitaraman, learned Senior Standing Counsel(Income Tax) and Mr.V.Ramachandran, learned Senior Counsel for the assessee.

4. The question lies in a very narrow campus and it is not necessary to go into the large question raised by the learned Senior Standing Counsel that the share income received by the assessee is his income and is liable to be included under Section 5 of the Act. The question is whether the share income received by the beneficiary is liable to be included for determining the rate purposes in the individual assessment of the beneficiary. There is no dispute that the trustees were assessed in terms of the provisions under Section 161 (1A) of the Act read with 164 of the Act and the tax was levied at the maximum marginal rate. Section 86 of the Income Tax Act lies under Chapter VII and that Chapter deals with the procedure for assessment of share of a member of an association of persons or body of individuals in the income of the association or body. During the relevant assessment year in question, there is no doubt that if the assessee was a member of association of persons or body of individuals, his share shall be taken into account for rate purposes. Under the proviso to subclause (v) of Section 86 where the association or body of individuals is chargeable to tax at the maximum marginal rate on its total income, the share of a member shall not be included in his total income. It is stated that the representative assessee was not assessed in the status of association of persons and consequently, the assessee was not a member of association of persons and not received the share income as a member of association of persons. Therefore, sub-clause (v) of Section 86 of the Income Tax Act is not applicable and has no application to the facts of the case.

5.More over, under the proviso to Section 86(i)(v) of the Act, if the association of persons was charged to tax at the maximum marginal rate, then also, the share income of the member of association of persons shall not be included in his total income even for rate purposes. On the facts of the case

the entire income of Trust was charged to tax at the maximum marginal rate under Sections of 161 (1A) and 164 of the Act making it inapplicable Section 86 (1)(v) of the Act.

6.Therefore, viewed the matter from any angle, the assessee not being a member of association of persons or on the ground that the representative assessee was already assessed at the maximum marginal rate, the share of benefit received by the assessee from the trust is not liable to be included even for rate purposes under Section 86 of the Act.
7.Though, the learned Senior Standing Counsel (Income Tax) referred to Section 5 of the Act and submitted that under Section 5 the share of benefit received by the assessee is liable to be included as the income of the assessee it is not necessary to consider that aspect. Section 86(i)(v)clearly excludes the same even for rate purposes. Further Section 5 is also subject to other provisions of the Act, including Sections 66 and 86 of the Act.

8.Therefore, we do not find any reason to interfere with the order of the Income Tax Appellate Tribunal holding that the share of the benefit received by the assessee from the trust is not liable to be taken into account for rate purposes.

9.Consequently, the question of law referred to us is answered in the affirmative, in favour of the assessee and against the Revenue. However, in these circumstances, there will be no order as to costs.
(N.V.B.J.) (K.R.P.J.)
19.11.2002

Index: Yes
Internet: Yes
sal

To

1.The Assistant Registrar
Income-Tax Appellate Tribunal
Rajaji Bhavan
Besant Nagar
Chennai 600 090 (Five copies with records)

2.The Secretary
Central Board of Direct Taxes
New Delhi (Three copies)

3.The Commissioner of Income-tax
Tamilnadu-IV, Madras

4.The Commissioner of Income-Tax
(Appeals IX)
Madras 34

5.The Income Tax Officer
City circle v(3)
Madras 34